

In the Matter of Merchant Mariner's Document No. Z-476122
Issued to: FELIX GUZMAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

590

FELIX GUZMAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 21 February, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-476122 issued to Felix Guzman upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as waiter on board the American SS JAMAICA under authority of the document above described, between 2 February, 1950 and 20 March, 1950, while said vessel was on a foreign voyage, he wrongfully conspired with crew member Luis Segarra to transfer marijuana (First Specification); and on or about 24 March, 1950, he wrongfully had marijuana in his possession at New York City (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Luis Segarra, certified extracts from the shipping articles of the JAMAICA, a certified copy of Appellant's indictment and conviction for the unlawful transfer of marijuana cigarettes, copies of sworn statements made by Appellant and Segarra before a Customs Agent, and the testimony of the shorthand reporter to verify that the latter documents were copies of the original transcripts of the statements by Appellant and Segarra. Appellant's statement was received in evidence as an admission without objection by counsel. Over objection and after argument, Segarra's statement was received in evidence in accordance with Section 343a of the Civil Practice Act of New York State which provides that a party may impeach his own witness by showing that the witness made a prior contradictory statement under oath. The Investigating Officer then rested his case.

Counsel for Appellant moved to dismiss the first specification on the ground that since the statement of Segarra was admissible as a prior contradictory statement solely to impeach his credibility

and not as affirmative evidence to establish the facts necessary to sustain the first specification, there was no evidence of a conspiracy between 2 February, 1950 and 20 March, 1950. The Investigating Officer contended that evidence of the conspiracy was contained in Appellant's statement which had been taken by the Customs Agent. The Examiner reserved decision on the motion at this time but he denied the motion before rendering his decision which clearly states that he considered Segarra's statement only for its impeachment value but that Appellant's statement and his conviction were sufficient evidence to prove that the conspiracy arose between the dates alleged in the first specification.

In defense, Appellant testified under oath in his own behalf and also submitted three documents attesting to his commendable service in the United States Merchant Marine. Contrary to the two prior statements made before the Customs Agent but in agreement with Segarra's testimony at the hearing, Appellant stated that the arrangement for him to procure marijuana cigarettes for Segarra was not discussed until these two seamen accidentally met on the corner of 116th Street and Lexington Avenue in New York City two or three days after Appellant had signed off the shipping articles for the completed voyage on board the JAMAICA.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-476122 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the conspiracy charge is based solely on suspicion rather than on verifiable evidence, and that the Examiner has relied completely upon Appellant's statement of 28 March, 1950, although this statement is not in any way inconsistent with Appellant's or Segarra's testimony in which they stated that they had made no agreement with regard to the marijuana cigarettes until after Appellant had been discharged from the ship. Therefore, the Coast Guard has no jurisdiction to be concerned with Appellant's activities on 24 March, 1950, when he was no longer serving on board a vessel under authority of his document.

Appellant's statement on 28 March, 1950, that he knew Segarra wanted to buy marijuana cigarettes "because I was on the same ship with him the trip before that," is capable of both innocent and guilty interpretations and such a vague statement must be given an interpretation consistent with innocence rather than with guilt. Appellant answered the Customs Agent's questions openly and frankly but he did not mention his conversation with Segarra at 116th Street and Lexington Avenue because no question was asked which was intended to elicit such information.

Appellant pled guilty to the criminal charge and he paid his debt to society by serving five months' imprisonment at Danbury, Connecticut. It would be unfair to punish him further by depriving him of his sole means of supporting his wife and family.

APPEARANCES: Messrs. Englander and Englander of New York City by Herman Englander, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

Between 2 February and 21 March, 1950, Appellant was serving as waiter on board the American SS JAMAICA and acting under authority of his Merchant Mariner's Document No. Z-476122 while the ship was on a foreign voyage. He left the ship on 20 March but did not sign a release and receive his wages until the following day. The JAMAICA was berthed in the Port of New York at Pier 9, North River, upon completion of the voyage.

Appellant lived in the same quarters with another waiter, Luis Segarra (also known as "Lulu"), on board the ship and the two seamen worked together. Segarra was a habitual user of marijuana. He smoked as many as fifteen to twenty marijuana cigarettes a day. Segarra was signed on the shipping articles for the next voyage and the scheduled sailing date was 24 March, 1950. Appellant only made one voyage on the JAMAICA in a relief capacity.

During the course of the voyage and prior to the time when Appellant signed a release on 21 March, 1950, he and Segarra made an agreement whereby Appellant was to try to obtain and transfer to Segarra a supply of one hundred marijuana cigarettes without use of the written order forms required by law to make the transfer legal. They agreed on a price of twenty dollars for a hundred cigarettes.

After signing off on 21 March, Appellant contacted a seaman known to him only as "Jim" or "Jimmy." On 24 March, Appellant went to the union hall and received one hundred marijuana cigarettes from "Jim" who was to be paid fourteen dollars for them. Appellant returned home and later in the day he went with his wife to Pier 9, North River, where the JAMAICA was moored. Appellant talked with another crew member of the JAMAICA and asked him to go aboard and tell "Lulu" that Appellant wanted to see him. At approximately 1530, Segarra met Appellant outside the gate at Pier 9 and gave him a twenty dollar bill in exchange for the hundred marijuana cigarettes which were wrapped in a paper bag. Appellant wrote his name and address on a piece of paper and gave it to Segarra at this time.

Segarra put the package in his pocket and he was apprehended by two Customs Officers shortly thereafter when he was returning to the ship. They found the package of cigarettes on Segarra's person and broke open one of the cigarettes. Segarra recognized the dark contents as marijuana. Segarra made a statement under oath before Customs Agent Thomas G. Duncan on 27 March, 1950.

Appellant had left the pier before Segarra was approached by the Customs Officers and, consequently, Appellant did not know that Segarra had been arrested. On the next day, 25 March, Appellant met "Jim" at the union hall and gave him the agreed sum of fourteen dollars. Appellant

kept the six dollars difference as his profit from the transaction.

On 27 March, 1950, Appellant was arrested in connection with his activities on 24 March. On 28 March, he made a voluntary statement under oath when questioned by Customs Agent Thomas G. Duncan. Subsequently, Appellant was indicted for transferring to Luis Segarra approximately one hundred cigarettes, containing a quantity of Cannabis Sativa (marijuana), on 24 March, 1950, which transfer was not in pursuance of a written order of Luis Segarra on a form issued for that purpose by the Secretary of the Treasury of the United States. On 31 July, 1950, Appellant appeared with counsel in the District Court of the United States for the Southern District of New York and was convicted upon his plea of guilty to this offense. Appellant was sentenced to six months imprisonment and served five months at Danbury, Connecticut, having received one month off for good behavior.

Appellant is now 37 years of age, married, and has seven children by different wives. He had been sailing in the United States Merchant Marine for six years until the time of this incident and no prior disciplinary action has been taken against his document.

OPINION

Because of the established policy of the Coast Guard in all narcotics cases, the order of revocation must be sustained if there is adequate evidence to support either or both of the offenses alleged in the two specifications. And if there is substantial evidence in the record to support my findings of fact, there is no doubt that these findings are sufficient to support the conspiracy alleged in the first specification.

Appellant contends that the Coast Guard has no jurisdiction in this matter because there was no discussion of any agreement to transfer marijuana until Appellant and Segarra accidentally met at 116th Street and Lexington Avenue a few days after Appellant had been discharged from the JAMAICA. This claim is based upon the testimony of both Appellant and Segarra at the hearing; and the attempt to reconcile Appellant's statement on 28 March and his testimony at the hearing in the manner mentioned above.

I think that the decision of the Examiner is well reasoned and I agree with his conclusions. Since neither Appellant nor Segarra had mentioned in their prior statements a meeting at 116th Street and Lexington Avenue, the Examiner considered that Segarra's statement thoroughly impeached the value of his testimony at the hearing and that the statement made by Appellant was more likely to contain the truth than his later testimony during the hearing. The latter conclusion was also based upon the Examiner's personal observation of Appellant while he testified.

Fabrication in Appellant's testimony at the hearing seems probable for several other reasons. Appellant was very vague as to how and where he first met "Jim" and who he was; but his memory was very clear as to the exact place where Appellant met Segarra in Manhattan. Appellant testified that he had not met "Jim" until after the chance meeting with Segarra. Then, he stated that the price of five dollars for twenty-five cigarettes had been agreed upon at 116th Street; but in his statement

Appellant had replied in the affirmative when asked if "Jim" had told Appellant that he should charge five dollars for twenty-five cigarettes and keep the difference of one dollar and fifty cents. Appellant also testified that he did not know until after the completion of the voyage that Segarra used marijuana. This seems highly improbable in view of the fact that these two seamen shared the same quarters aboard the JAMAICA for more than six weeks and Segarra's testimony that he smoked fifteen to twenty marijuana cigarettes a day. Appellant's testimony is further confusing where he testified, at first, that he had never made any arrangements with Segarra prior to the date of delivery and then, later, that he talked with Segarra about the marijuana "one day after I quit the ship" (R.61). It is also noted that such an accidental meeting in a city the size of New York would be extremely improbable and it is very unlikely that a person indulging in marijuana as heavily as Segarra does would depend upon some such remote possibility for his supply of marijuana cigarettes on the next voyage.

Since the facts definitely establish that some arrangements amounting to a conspiracy had been entered into between Appellant and Segarra prior to 24 March, 1950, and having reached the conclusion that Appellant's and Segarra's testimony as to when the arrangements were made is highly improbable, the only reasonable inference supported by the balance of the evidence is that the conspiracy originated on board the JAMAICA before the completion of the voyage during which Appellant was a member of the crew.

The probability of this view is supported by Appellant's statement of 28 March, 1950, not only because of his complete failure to make any reference to having met Segarra in Manhattan but, particularly, on the basis of the following:

"Q. How did you know that the seaman you called Lulu wanted to buy cigarettes?

A. Because I was on the same ship with him the trip before that.

Q. What discussion did you have with him about it?

A. He asked me if I knew somebody who would sell to him, so I told him 'I know a guy like this and this or that,' and then he told me. I did it because I was broke, you know?"

Appellant could only have been referring to the voyage covering the dates alleged in the first specification since he was only aboard the JAMAICA for one voyage and Segarra had been serving on the JAMAICA for about two years according to his testimony. By his answer to the first of the above two questions, Appellant practically admitted that negotiations began during the voyage; and his second answer completely concedes this position since he did not claim that the discussion about the marijuana took place elsewhere than on board the ship. This part of Appellant's statement does not bear out his contention that he was not asked any questions which would elicit information concerning the meeting at 116th Street and Lexington Avenue. And it is Appellant's own contention that he answered openly and frankly when this statement was taken from him by Customs Agent Duncan.

Additional evidence of the conspiracy is the overt act of transferring the marijuana cigarettes

to Segarra on 24 March, 1950. The fact that Appellant was no longer under articles on this date is not in any way significant with respect to the first specification since the only purpose of the overt act is to supply evidence from which to infer the existence and object of the conspiracy. Such circumstantial evidence is usually the only available evidence of a conspiracy. The conspiracy was a separate and distinct offense from the overt act which was the object of the conspiracy. It became complete when the agreement was made. Therefore, it is irrelevant to the proof of the first specification whether Appellant was acting under the authority of his document at the time of the overt act. In addition, an overt act is required by statutory law but it is not necessary to constitute the offense of conspiracy at common law; and there is no charge of statutory offense of conspiracy contained in the first specification.

Having found that the conspiracy was formed prior to the time when Appellant signed off the shipping articles and that the overt act in furtherance of the conspiracy was committed after Appellant signed off the articles, the circumstances pertaining to the first specification in this case are quite similar to those present in Headquarters Appeal No. 506. An apparent difference in the two cases is that in this one the attempt was made to transfer the narcotics from shore to ship rather than vice versa as in Appeal No. 506, I consider this distinction to be completely superficial. If either offense is the more serious, it is the one under consideration here because the resultant danger to the ship and her personnel would have been greater if the attempt had been successful.

With respect to the second specification, I have decided in previous cases where there has been a continued and proximate relationship between the alleged offense and the service aboard the vessel, that a seaman may still be acting under the authority of his document for the purpose of these proceedings although he has signed off the shipping articles at some prior time. But it is not necessary to discuss this question in connection with the second specification in this case since proof of the first specification is adequate to uphold the order imposed by the Examiner.

CONCLUSION

The order of revocation will be sustained despite Appellant's imprisonment for this offense and the hardship this order may cause him and his family. These are remedial proceedings in which the Coast Guard is obligated by statutory mandate to protect lives and property at sea. This duty can be complied with in narcotics cases only by the most severe order of revocation. The order of revocation has become the strict policy of the Commandant when any offense involving narcotics has been proven. There may be no deviation from this policy.

ORDER

The order of the Examiner dated 21 February, 1951, is hereby AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 11th day of September, 1952.